STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-238

July 1, 1998

PUBLIC UTILITIES COMMISSION
Utility Employee Transition Benefits (Chapter 303)

ORDER ADOPTING RULE

WELCH, Chairman; NUGENT, Commissioner

I. SUMMARY

In this Order, we adopt rules which establish the procedures investor-owned utilities will follow in offering employees transition benefits.

II. INTRODUCTION

During May of 1997, the Maine Legislature decided that all Maine electricity customers will have the right to purchase generation service from competitive providers beginning March 1, 2000.[1] To promote an effective competitive market, the Legislature required each current investor-owned utility to divest most of its generation assets by that date. The changes in the industry structure and the divestiture of generation assets may cause current investor-owned utility employees to lose their jobs. The Legislature anticipated potential workforce reductions and included in the Act provisions requiring each investor-owned utility to develop a program to: (1) assist affected employees in maintaining fringe benefits and obtaining employment that makes use of their potential; (2) provide employees with retraining services and out-placement services and benefits for 2 years after the beginning of retail access; (3) provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State, or equivalent retraining services; (4) provide continued, equivalent health care insurance for 2 years or until permanent replacement coverage is obtained through reemployment; and (5) provide severance pay equal to 2 weeks of base pay for each year of full-time employment. 35-A M.R.S.A. § 3216(2).

[1] "An Act to Restructure the State's Electric Industry." P.L. 1997, Ch. 316 (Act), codified as Chapter 32 of Title 35-A (35-A M.R.S.A. §§ 3202-3217).

The Commission must adopt rules to implement the statutory requirements. These are routine techinical rules pursuant to 5 M.R.S.A. § 8071. In addition, the Commission must set certain deadlines relating to eligibility for benefits and allocate the "reasonable accrual increment cost" of the services and benefits to ratepayers through charges collected by the transmission and distribution (T&D) utility. 35-A M.R.S.A. § 3216(5).

III. BACKGROUND

Prior to instituting this rulemaking proceeding, we conducted an inquiry in Docket No. 97-585 (NOI Phase) into many of the issues we anticipated would arise in this rulemaking.[2] We received comments from the Office of the Public Advocate (OPA), Maine Public Service Company (MPS), and Central Maine Power Company (CMP). The comments were constructive and helped us develop our proposed rule.

On April 7, 1998, we issued a Notice of Rulemaking and Proposed Rule (NOR Phase) and requested comments from all interested parties. The only party that filed comments in response to the NOR was the OPA, which limited its comments to the issue of the period of eligibility for benefits.

IV. GENERAL POLICY CONSIDERATIONS

All three commenters in the NOI Phase generally agreed that the Legislature contemplated limited involvement by the Commission with the employee transition benefit plans. Indeed, section 3216 does not provide a review procedure, standard of review, or approval requirement with respect to the utilities' filing of benefit plans. Further, the statute appears to specify all of the necessary components for the transition benefits plans. Finally, all commenters agreed that the Commission's expertise clearly lies in economic regulation and not regulation of labor relations between utilities and their employees.

While cognizant of its limited role, both the Commission and the NOI commenters recognized that the Commission must ensure that the spirit and intent of the statute is met. Specifically, while the statute provides no express review mechanism, it is clear that the Legislature contemplated some level of review when it required the utilities to file the plans with the Commission. If the Commission is required to review the plans, it must apply some general standard in evaluating whether the plans meet the

[2] Inquiries are conducted pursuant to the Commission's Rules, Ch. 110, Part 12.

statute's minimum requirements; the Rule we adopt today includes such a standard.

V. DISCUSSION OF INDIVIDUAL SECTIONS

Section 1: General Provisions and Definitions

Subsection 1.A sets forth the scope of the Rule. Subsection 1.B contains the definitions of key terms used in the Rule. Some of the terms were defined in the statute and are included in the Rule for convenience. Other definitions affect the application of this Rule and thus warrant further explanation.

First, Subsection 1.B(2) of the Rule defines an "eligible employee," in part, as one who is laid-off by either the investor-owned utility or the new owners of the divested generation assets. During the NOI Phase, both MPS and CMP supported coverage of employees of the new owners who are laid-off due to retail competition. The OPA, however, argued that it was not the intent of the Legislature that the T&D utility "act as the guarantor of transition benefits for its former employees who chose -- voluntarily -- to leave the utility for another job -- presumably more attractive -- with an unregulated entity." The Commission notes, however, that it is far more likely that employees of the investor-owned utility will have little choice regarding employment with the new owner. Quite simply, the employees will likely be required to take the new job (which may or may not be more attractive than their previous job) or face unemployment. If these employees are then laid-off by the new owners due to retail competition, they should also receive transition benefits. Thus, the Rule covers employees laid-off by both the investor-owned utility and the new owners.

Subsections 1.B(3) and (5) define health and fringe benefits. During the NOI Phase, the OPA recommended that the Commission establish specific definitions for these terms while MPS and CMP encouraged the Commission to let the utilities define the terms in their respective plans. Both MPS and CMP noted, however, that the benefits should be the same benefits provided to the employees prior to termination. The Rule does not specify every possible type of benefit covered but does require the plan to offer the same benefits as provided to the employees prior to their termination.

Finally, Subsection 1.B(7) defines the phrase "reasonable accrual increment cost" to be the costs of the employee transition plan, over-and-above currently provided benefit costs. The NOI Phase commenters varied greatly on their suggested definition of this phrase. CMP argued that because the transition benefits are not normally available to employees and

therefore not already included in rates, the phrase should be defined as “the costs of the transition benefits programs.” OPA proposed that the phrase be defined as, “the incremental costs of the utility’s transition benefit program over and above currently-provided benefit costs." MPS defined the phrase as, “the but-for costs of the Legislation . . . These costs include not only the statutory benefits in excess of the utility’s contractual benefits, but also the actual terminations caused by retail access, neither of which are being currently collected in rates.” The Commission notes that the costs of health and fringe benefits currently offered to employees <u>are</u> currently included in rates. Accordingly, the Rule provides for the allocation of only those costs over and above currently provided benefit costs.

<u>Section 2: Periods of Eligibility</u>

Section 2 of the proposed Rule provided that, absent just cause, any layoff which occurs between the effective date of the Rule and December 31, 2001, will be deemed to be due to retail competition. Our proposal was based upon our interpretation of various subsections of section 3216. Specifically, section 3216(1)(A) provides that, absent just cause, all layoffs that occur after March 1, 2000, will be "deemed" to have been “due to” retail competition. 35-A M.R.S.A. § 3216(1)(A). It then requires the Commission to establish an end date of automatic eligibility. We proposed December 31, 2001, as the end date.

The OPA objects to our proposed December 31, 2001 end date on the grounds that it is too long. The OPA argues that “any transmission and distribution utility can reasonably be expected to have completed the process necessary to make itself more efficient and ready for retail access within the first year after the onset of 'retail access'." Thus, the OPA argues that ratepayers should not be required to pay the costs of transition benefits for laid-off utility employees beyond March 1, 2001.

The OPA also argues that the Legislature did not intend to provide transition benefits to utility employees who are laid-off for other market-related or efficiency-enhancement reasons. The implication of the OPA's argument is that layoffs which occur after March 1, 2001, will not be due to restructuring *per se* but will be market and efficiency related and such employees should not be entitled to benefits.

We determine today that our proposed December 31, 2001 end date is a reasonable accommodation of the Legislature’s intent to provide transition benefits to employees laid-off due to the restructuring of the electric industry, the ratepayers’ interest in not shouldering the burden of unwarranted benefits, and the

utilities' interest in efficiently transitioning into a competitive market without unduly disadvantaging its employees. We believe that the transition to retail access will not occur overnight and that employees should be protected for a reasonable amount of time. Our Rule allows 10 more months of coverage than the OPA's proposal. We find that this additional time reflects the intent of the Legislature to ensure that electric utility workers be retrained so that they may reenter the work force and become contributing members of the State's economy again. Finally, we find that the Legislature did not exclude benefit coverage for workers laid-off due to market and efficiency reasons during the period immediately after retail access, and thus, there is no reason to exclude them or others from coverage by cutting the deadline short.

With regard to the eligibility of employees laid-off before March 1, 2000, section 3216 appears to contemplate that employees terminated between January 1, 1998, and March 1, 2000, are eligible for benefits if the layoff is "due to" retail competition. Rather than develop a complicated process for determining whether a layoff was "due to" retail competition, we proposed assuming that any layoff and which occur between the effective date of this Rule and March 1, 2000, are "due to" retail competition. Currently, all three major electric utilities, CMP, MPS, and Bangor Hydro Electric, are scheduled to divest their assets prior to March 1, 2000. The Rule reflects our belief that utilities will begin to reorganize their workforces in anticipation of divestiture and retail access before those actual events occur. Given the statute's clear intent to provide benefits to employees laid-off as a result of workforce reorganization due to restructuring of the electric industry, and the fact that each of the major investor-owned utilities is moving towards early divestitures, eligibility will begin on the effective date of the Rule.

Section 3: Scope of Benefits

Subsection 3.A(1) lists the specific benefits which must be included in an investor-owned electric utility's plan. The Rule mirrors the statute, adding no additional benefit requirements to the Rule. Subsection 3.B provides that other discretionary benefits, such as early retirement benefits, may be included in the plan; the utility, however, will have to justify the recovery of the costs of any such benefits in rates.

Section 4: Commission Review of Plans

Subsection 4.A(1) mirrors the statute and requires a utility to inform its employees and their certified representatives of the provisions of the plan prior to filing with the Commission.

Subsection 4.A(2) addresses when utilities must file their plans. The statute requires a utility to file its transition benefits plan prior to finalizing any transaction that would result in an eligible employee being laid-off or 90 days prior to retail access, whichever comes first. 35-A M.R.S.A. § 3216(3). Given the requirement in Section 3 that eligibility begin on the effective date of the Rule and the fact that many of the utilities are moving toward early divestiture, the Rule requires each utility to file its plan within 60 days of the effective date of the Rule.

Subsection 4.B(1) provides that upon receipt of a proposed plan, the Commission will provide interested persons with a 30-day period to file comments regarding whether the plan meets the requirements of section 3216 and the Rule.

Subsection 4.B(2) sets forth the scope of the Commission's substantive review of the plan. As noted earlier, all of the parties to the NOI Phase agreed that the scope of the Commission's review should be minimal. The Rule limits the Commission's review to a determination of whether the plan is consistent with section 3216 and the Rule. If the plan is inconsistent with section 3216 it will be rejected, and the utility will be required to refile the plan after it makes the necessary changes.

Subsection 4.B(2)(b) addresses the treatment of plans which contain benefits in excess of the statutory requirements. Any such plan will be accepted on the condition that the costs of any non-mandatory benefits will not be considered under 35-A M.R.S.A. § 3216(5) but instead determined in an appropriate ratemaking proceeding under applicable ratemaking principles.

Subsection 4.B(3) addresses the Commission's continued oversight once a plan is accepted. During the NOI Phase, both CMP and MPS commented that the Commission should have limited continued involvement with the plan, while OPA argued that the utility should be required to report every six months on all activities associated with the plan. The Rule provides that after the Commission accepts a utility's proposed plan, any disagreements arising under the terms of the agreement will be addressed through labor-relations dispute-resolution forums.

Subsection 4.C addresses the statute's requirement that notice of layoffs be filed with the Commission. Paragraph 4.C(1) requires that while the plan is in effect, the utility must

provide the Commission at least 60 days prior notice of any closure, relocation, reorganization or other action that will result in layoffs. Paragraph 4.C(2) requires the new owner, as a condition of the approval of the divestiture, to provide the utility with notice of any closure, relocation, reorganization or other action which will result in layoffs of former employees at least 75 days prior to the event. Finally, Paragraph 4.C(3) lists the specific information which must be included in the notice.

Section 5: Cost Recovery

Section 5 describes how investor-owned utilities will recover the costs of the benefits required by the statute. Subsection 5.A mirrors the statute's requirement that the Commission allocate the "reasonable accrual increment cost of the services and benefits" (as defined in section 1) of this program to ratepayers through charges collected by the transmission and distribution utility. 35-A M.R.S.A. § 3216(5). Subsection 5.B provides that determining the reasonable costs will take place during an appropriate ratemaking proceeding. The details of the recovery will be determined in the specific proceeding.

Subsection 5.C provides that the recoverable costs of the employee transition benefits program will be reflected in rates prior to the implementation of electric restructuring on March 1, 2000.

Subsection 5.D provides that both the costs and the revenues collected which relate to the employee transition benefits will be accounted for by the benefits administrator. The costs and collections must be recorded in separately identifiable accounts so that they can be reported to the Commission, if requested.

Section 6: Collective Bargaining

Section 6 mirrors verbatim the statute's requirements relating to collective bargaining issues.

Section 7: Waiver

Section 7 allows the Commission to waive any of the requirements of the Rule if good cause is shown and to subsequently rescind, alter or amend any waiver.

Accordingly, we

O R D E R

1. That the attached Chapter 303, Employee Transition Benefits, is hereby adopted;

2. That the Administrative Director shall file the adopted rule and related materials with the Secretary of State;

3. The Administrative Director shall send copies of this Order and the attached rule to:

   a. All electric utilities in the State as well as the labor unions/collective bargaining agents representing their employees;

   b. All person listed on the service list or who filed comments in the Inquiry, *Public Utilities Commission Inquiry into Utility Employee Transition Services and Benefits*, Docket No. 97-585;

   c. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies);

4. That this Order will also be posted on the Commission's website, http://www/state.me.us/mpuc.

Dated at Augusta, Maine, this 1st day of July, 1998.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent